(b) The Minister had wrongly made the order to enhance the punishment which he had no power to do.

The Respondents deny that she made a request to the disciplinary authority to call Nik Norihan Thani as a witness. The record of hearing by the disciplinary authority was produced to the court and it does not show that such request was made. The Applicant did not produce any document to the court to show that when she appealed to the Minister she complained against the disciplinary authority's refusal to hear Nik Norihan Thani's evidence. I am therefore unable to find that such request was made by the Applicant.

As to the second ground, I find nothing in the law to prevent the Minister from enhancing the punishment. Section 16B(5) provides –

"Where the Minister does not summarily reject an appeal under subsection (4), he shall appoint a committee of two or more persons, from within or without the University, to consider the appeal and make its recommendations to him, and, upon receiving such recommendations, the Minister may give such decision on the appeal as he deems fit and proper."

In my opinion these provisions are wide and the decisions which the Minister may make under the provisions include enhancing the punishment if he deems enhancement fit and proper. It is also relevant to refer to rule 45 of the University of Malaya (Discipline of Students) Rules, 1975, which provides –

"A student who is found guilty of a disciplinary offence shall be liable to any one or any appropriate combination of two or more of the following punishments:

(a) reprimand;

(b) a fine not exceeding two hundred ringgit;

(c) suspension from any or all of the facilities of the University for a specified period;

(d) exclusion from any part of the University for a specified period;

(e) expulsion from the University."

The Minister's order that the Applicant be not allowed to enter the University during the 1977/78 session was in accordance with item (d) above. The Minister's order that the Applicant should move out of the hostel and not to stay in any of the University hostels was in accordance with item (c) above.

I would also like to add that the Minister's order dated September 13, 1977 was not valid since no committee had been appointed under section 16B(5) to make recommendations to the Minister. Therefore there was nothing to prevent the Minister from appointing a committee subsequently, to consider its recommendations and to make a new valid order, as he subsequently did.

This application is dismissed. I make no order as to costs.

Application dismissed.

Solicitors: *Atma Singh Veriah & Co.; Shook Lin & Bok.*

SOUTH JOHORE OMNIBUS SDN. BHD. v. DAMAI EKSPRES

[O.C.J. (Yusoff Mohamed J.) March 31, 1982]

[Johore Bahru – Civil Suit No. 29 of 1982]

Practice & Procedure – Application for interlocutory injunction to restrain bus company from operating in excess of 2 trips daily – Action frivolous.

Practice & Procedure – Public nuisance – Remedy allowed only in relator action.

The plaintiff sought for an interlocutory injunction to restrain the defendants' company from operating express bus service between Johore Bahru and Air Hitam in excess of 2 trips per day and in non-compliance with the conditions of the licence granted to them by the Licensing Board. The plaintiffs contended that the defendants were in breach of their licence and as a result the plaintiffs suffered loss of income.

Held, dismissing the plaintiffs' claim: the remedy sought by the plaintiffs is to prevent a breach of the law which is a public wrong in which only the Attorney-General as Public Prosecutor could sue on behalf of the public. The Courts have no jurisdiction to entertain such claim by private individuals who have not suffered damage.

Cases referred to:–

(1) *Gouriet* v. *U.P.W.* [1978] A.C. 435, 494.
(2) *Majlis Perbandaran Pulau Pinang* v. *Boey Siew Than & Ors.* [1979] 2 M.L.J. 127.

CIVIL SUIT.

David Ng Kim Seng for the plaintiffs.
Abbas Ismail Rowland for the defendants.

Cur. Adv. Vult.

Yusoff Mohamed J.: This is an application for an interlocutory injunction to restrain the defen-

dants' company from operating an express bus service between Johore Bahru and Air Hitam in excess of two trips per day and in non-compliance with the conditions of the licence granted to them by Lembaga Pelesenan Pengangkutan Jalan (Licensing Board). The affidavit in support of the application states that the plaintiffs are also a public transport company licensed by the same Licensing Board to operate bus services in Johore Bahru including the route between Johore Bahru and Air Hitam.

By letter at exhibit YAS–1 (copy of which was extended to the plaintiffs and other bus operators), the Licensing Board on February 28, 1980, approving the defendants' application stated that the express service was allowed for two return trips per day only. The plaintiffs have since observed that the defendants have been plying their motor buses for more than two trips per day between Johore Bahru and Air Hitam.

On December 21, 1981, the plaintiffs through their servants purchased five tickets from the defendants' company for trips from Johore Bahru to Air Hitam scheduled for that day at the following hours:–

8.00 a.m.
9.00 a.m.
11.30 a.m.
1.30 p.m. and
4.00 p.m.

The plaintiffs contended that in these circumstances, the defendants were in breach of their licence and as a result the plaintiffs suffered loss of income.

The evidence in support of the application seems to be scanty. No licence granted to the defendants by the Licensing Board was produced and for that reason the court was not able to know whether the licence granted actually followed the letter of approval and whether any such condition was imposed on the licence. The five tickets purchased by the plaintiffs were for scheduled trips. It was not known whether those five trips were actually made by the defendants' bus on that day.

The plaintiffs claimed to have suffered loss of income. It was also not specified how such losses were incurred in view of many other buses touring the same route including numerous taxi operators travelling the same road. The plaintiffs cannot say with certainty that the passengers taken in excess of two trips by the defendants were rightfully their passengers, and would board their buses, in view of many other public service vehicles plying on the same route. In my opinion, the application is frivolous.

Even assuming that the plaintiffs' application was properly made and they have shown that they have suffered special damages, in my view, they would not be entitled to an injunction in order to enforce a provision of penal law.

The Licensing Board grants licences for public service vehicles under section 94 of the Road Transport Ordinance 1958; conditions may be attached to such licences under section 119 and statutory conditions imposed thereto under section 120 of the Ordinance. Breach of those conditions entail prosecution by Public Prosecutor, Police Officer and Road Transport Officer (see section 142 of the Ordinance). The breach is punishable under section 92 or section 146 of the Ordinance.

The remedy sought by the plaintiffs is to prevent a breach of the law which is a public wrong in which only the Attorney-General as Public Prosecutor could sue on behalf of the public. The courts have no jurisdiction to entertain such claim by private individuals who have not suffered damages.

In *Gouriet* v. *U.P.W.*[1], Viscount Dilhorne in his speech said that:–

"The conclusion to which I have come in the light of the many authorities to which we were referred is that it is the law, and long established law, that save and in so far as the Local Government Act 1972, section 222, gives local authorities a limited power so to do, *only the Attorney-General can sue on behalf of the public for the purpose of preventing public wrongs and that a private individual cannot do so on behalf of the public* though he may be able to do so if he will sustain injury as a result of a public wrong. In my opinion the cases establish that *the courts have no jurisdiction to entertain such claims by a private individual who has not suffered and will not suffer damage.*" (My emphasis).

To enable the court to entertain jurisdiction in cases where the individual suffers injury, the harm done to the private right of such individual must be grave and irreparable. Lord Diplock in the same case at page 500 says:–

"This is a consideration that it would be proper for the court to bear in mind in exercising its discretion whether or not to grant an injunction in this type of case; but however sparingly it should be exercised, where the court is satisfied that grave and irreparable harm would otherwise be done to the plaintiff's private rights for which damages could not

provide adequate compensation, it has undoubted jurisdiction to grant one."

The only recourse open to the plaintiffs in this case where grave and irreparable injury is proved is to cite the Attorney-General in a relator action. "The need to obtain the Attorney-General's consent to relator proceedings is the means of enabling the Attorney-General to exercise an equivalent control in the public interest over a private application for injunctions against crimes." (Lord Fraser of Tullybelton at page 521 of the same case).

In our country except in cases falling under section 80 of the Local Government Act 1976, section 8 of the Government Proceedings Ordinance 1956 applies to relator action. The provision states:—

"8. (1) In the case of a public nuisance the Attorney-General, or two or more persons having obtained the consent in writing of the Attorney-General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case."

Having regard to this provision, in my view, if the plaintiffs can show that this suit is founded on public nuisance they can sue on the relation of the Attorney-General and not otherwise.

In *Majlis Perbandaran Pulau Pinang* v. *Boey Siew Than & Ors.*[2], Raja Azlan Shah, C.J. at 129 speaking on the applications of section 8 of the Government Proceedings Ordinance, 1956 and of Local Government Act 1976 (Act 171) says:—

"In our view, the section speaks so plainly that it is clear from its terms that Parliament had intended to release a local authority from the obligation to sue on a relator action and not in their own name, where they are taking proceedings at law to abate a public nuisance on public or private premises within their own area in protection of the public interest."

Upon these grounds, the plaintiffs' application is refused.

Application dismissed.

Solicitors: *Lim & Hooi; Abbas Ismail Rowland & Co.*

JAMIAH BT. HOLAM v. KOON YIN

[A.C.J. (Hashim Yeop A. Sani J.) April 8, 1982]
[Kuala Lumpur – Civil Appeal No. 86 of 1981]

Road Traffic – Motor accident – Damages – Appeal against liability and quantum – Whether trial judge erred in finding on evidence.

The plaintiff was pillion riding on PW2's motor-cycle at the time of the accident. PW2 contended that he was following a car which was travelling behind the defendant's car, all travelling in the same direction. At the junction the defendant stopped her car for other traffic and the second car swerved to the left and overtook the defendant's car and went away. The defendant then suddenly reversed her car and the accident happened. The learned Magistrate rejected PW2's version by applying the speed table calculations. He accepted the defendant's evidence *in toto* which was that she stopped her car after giving the necessary signal and then heard a collision between PW2's motor-cycle and the rear portion of her vehicle.

The plaintiff appealed against the said decision on both quantum and liability.

Held: (1) if the magistrate had not rejected outright the evidence of PW2 but had considered it in the light of all the evidence adduced before him, a finding of 50:50 liability would be justified under the circumstances. Appeal would therefore be allowed and liability was apportioned on 50:50 basis;

(2) it is an established approach for a court exercising appellate jurisdiction to adopt that in an appeal on quantum unless it can be shown to the satisfaction of the Appellate Court that the award is extremely inconsistent with the discernible trend or that the award was made on some misapprehension of facts or some erroneous assumption of law or fact, the Appellate Court should not interfere;

(3) in this case there was no evidence to show that the magistrate went beyond the limits of decided authorities in awarding general damages. The appeal against quantum was accordingly dismissed.

Cases referred to:

(1) *Abdul Mokhti bin Haji Ahmad* v. *Idris bin Ibrahim* [1977] 2 M.L.J. 85.
(2) *De Cotta* v. *Tan Hock Lee* [1972] 2 M.L.J. 173.
(3) *Samar bt. Mansor* v. *Mustafa Kamarul Ariffin* [1974] 2 M.L.J. 71.
(4) *Shari bin Abdul Rahman* v. *Attorney-General* [1979] 1 M.L.J. xxxix.
(5) *Lim Soon Poh* v. *Ng Kong Lum* [1975] 2 M.L.J. iii.

MAGISTRATE'S APPEAL.

R. K. Nathan for the appellant.
K. Ramakrishnan for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: This was an appeal in a running down case on liability as well as quantum. The learned Magistrate had dismissed the claim of